

Hon. Kent A. Jordan
District Court
Federal Building
844 King Street
Wilmington, DE 19801

August 29, 2005

RE: Wells V. Carroll, NO. 1:05-CV-585 KAJ
— correction of habeas petition dated August 5, 2005


Dear Judge Jordan,

Enclosed is petitioner's corrected writ of habeas corpus that makes plain petitioner's intent to bring this Petition under both 28 U.S.C. 2241 and 28 U.S.C. 2254.

Although specified within the Petition "Memorandum of Law" at page 21 ("28 U.S.C. 2241, 2254"), the Table of Citations mistakenly lists this statute as "28 U.S.C. 2251 (p.V)" and the standard form provided by the District Court (through the Delaware Correctional Center law library) omits 28 U.S.C. 2241 from the heading.

Compare Zayas V. INS, 311 F.3d 247, 255 (3rd Cir. 2002) [AEDPA second or successive petitions gatekeeping does not apply to 28 U.S.C. 2241 (a)(c)(3)], In re Dorsainvil, 119 F.3d 245, 248 (3rd Cir. 1997) ("use" test, substantive change/clarification, "factually or legally innocent", "may resort to ... 28 U.S.C. 2241") and In re Nwanze, 242 F.3d 521, 525 (3rd Cir. 2001) ("one way to open the gate, albeit indirectly, would be to allow the petitioner to seek habeas corpus relief under section 2241" when subsequent substantive change in law exposes factual or legal innocence); and Gonzalez V. Crosby, 125 S.Ct. 2641 (2005) [Fed. R. Civil P. 60(b)(6) not a "second or successive habeas petition"].

Thank you.

Sincerely,

Joseph M. Wells, A.A.S.
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